

**UNITED STATES DISTRICT COURT**

**DISTRICT OF NEVADA**

STATE OF NEVADA,

Plaintiff,

vs.

BANK OF AMERICA CORP. et al.,

Defendants.

3:11-cv-00135-RCJ-WGC

**ORDER**

This case arises out of a national bank's and its subsidiaries' practices with regard to mortgage modifications. The Court denied Plaintiff's Motion to Remand (ECF No. 18), and Plaintiff has now moved to change venue to the unofficial southern division of the District. Defendants object. For the reasons given herein, the Court denies the motion.

**I. FACTS AND PROCEDURAL HISTORY**

Plaintiffs often claim in foreclosure lawsuits that the beneficiary or loan servicer made misrepresentations or unfulfilled promises concerning the availability of a mortgage modification. The State of Nevada (the "State") sued Defendants in state court on behalf of potentially thousands of individual Nevadans on a single cause of action under Nevada's Deceptive Trade Practices Act ("DTPA"), Chapter 598 of the Nevada Revised Statutes ("NRS"), alleging seven types of such misrepresentations. (*See* Compl., Dec. 17, 2010, ECF No. 4-1). The State requests declaratory judgment, an injunction against any practices declared to be unlawful, civil penalties as provided by sections 598.0999(2) and 598.0973, restitution as provided by section 598.0993, and the costs of investigation and attorney's fees as provided by section

1 598.0999(2). (*See id.* at 35–36). Defendants removed. The Court denied a motion to remand,  
2 and Plaintiff has now moved for a change of venue.

## 3 **II. LEGAL STANDARDS**

4 “For the convenience of parties and witnesses, in the interest of justice, a district court  
5 may transfer any civil action to any other district or division where it might have been brought.”  
6 28 U.S.C. § 1404(a). Furthermore, “[a] district court may order any civil action to be tried at any  
7 place within the division in which it is pending.” § 1404(c). Section 1404(a) may be invoked to  
8 transfer a case between divisions of judicial districts created by rule, not only those created by  
9 statute. *McNeil Const. Co. v. Livingston State Bank*, 155 F. Supp. 658, 662 (D. Mont. 1957).

10 Nevada constitutes a single district that is not divided into divisions, 28 U.S.C. § 108, but  
11 the District has two “unofficial” divisions under the local rules. The unofficial southern division  
12 encompasses Clark, Esmeralda, Lincoln, and Nye Counties, and cases originating in those  
13 counties are filed in Las Vegas and designated with “2:” at the beginning of the case number. *See*  
14 Local R. IA 6-1. The unofficial northern division encompasses the remaining counties, and  
15 cases originating in those counties are filed in Reno and designated with “3:” at the beginning of  
16 the case number. *See id.* “The court may in its discretion direct that proceedings or trial take  
17 place in the division other than the division where filed. Unless otherwise ordered, however, all  
18 filings shall be made and proceedings had in the division of the court in which the case was  
19 originally filed.” Local R. IA 8-1(c).

## 20 **III. ANALYSIS**

21 The State filed the present case in state court in Clark County, but Defendants removed to  
22 federal court in Reno, so the Clerk designated the case as an unofficial northern division case.  
23 The State does not request transfer to another district or to another judge within this District but  
24 asks to change venue to the unofficial southern division. The practical effects of granting the  
25 motion would be to alter the case number prefix from “3:” to “2:” and to change the default

1 hearing and trial location from Reno to Las Vegas. However, it is also possible that the Clerk  
2 would randomly reassign the case to another judge, raising the specter of judge-shopping. The  
3 most important consideration is whether it would be more convenient for the parties and  
4 witnesses to hold the trial in Las Vegas. The case is still in the pretrial stage; however, so only  
5 the convenience of the attorneys is currently implicated. Attorney convenience is a legitimate  
6 reason to change hearing locations on a hearing-by-hearing basis, but it is not a proper reason to  
7 formally change venue of a case. And attorneys in this state routinely travel between Reno and  
8 Las Vegas for hearings, and this Court permits telephonic appearances on short notice, in any  
9 case. Defendants' attorneys are based in Reno and Los Angeles, CA. Plaintiff's attorneys are  
10 based in Las Vegas, Carson City, and Washington, DC. Defendants' attorneys would therefore  
11 be more inconvenienced by hearings in Las Vegas than Plaintiff's attorneys would be by  
12 hearings in Reno. Any attorney may appear telephonically, but if the parties wish to appear in  
13 person, Plaintiff has an attorney in Carson City who may drive to Reno in less than an hour,  
14 whereas Defendants' attorneys would have to fly to Las Vegas if venue were changed. As for  
15 the inconvenience of the parties and witnesses at trial, there are not yet any witness lists for the  
16 Court to consider, and the motion is therefore premature in that regard. Plaintiff alleges  
17 thousands of similarly situated class members, so it is extremely doubtful that enough of them  
18 cannot be found in the Reno area for Plaintiff to make its case.

19 Finally, Plaintiff has moved to amend to add a second cause of action for declaratory  
20 judgment as to whether Defendants breached a previous consent judgment. Defendants argue  
21 that permitting this amendment will greatly expand the scope of litigation, making the case  
22 difficult for the Court to manage. Although the Proposed Second Amended Complaint  
23 ("PSAC") contains many pages of extraneous factual material and the second cause of action  
24 therein is both partially unclear and partially redundant with the first cause of action, this is no  
25 reason to deny permission to amend. This Court routinely manages many cases just as complex

1 as the present one.

2 **CONCLUSION**

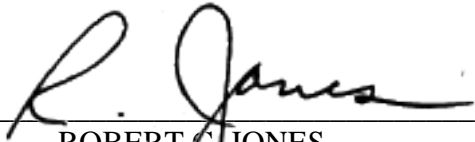
3 IT IS HEREBY ORDERED that the Motion to Change Venue (ECF No. 56) is DENIED.

4 IT IS FURTHER ORDERED that the Motion for Leave to File Second Amended  
5 Complaint (ECF No. 63) is GRANTED.

6 IT IS FURTHER ORDERED that the hearing set for November 15, 2011 is VACATED.

7 IT IS SO ORDERED.

8 Dated this 13th day of October, 2011.

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12 ROBERT C. JONES  
13 United States District Judge  
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